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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Truth-in-Billing )  
and )

Billing Format )

CC Docket No. 98-170

COMMENTS OF  
EXCEL TELECOMMUNICATIONS, INC.

Excel Telecommunications, Inc. ("Excel"), by its attorneys, respectfully submits these comments on the petitions for waiver, stay and other forms of relief (collectively, the "Petitions") from the Commission's order and related rules adopted in this proceeding.<sup>1</sup> Excel believes that the "new service provider" requirement in the *Truth-in-Billing Order* and rules needs to be clarified, and that the imminent compliance deadline for the *Truth-in-Billing* rules must be stayed at least until April 1, 2000, and pending clarification or reconsideration. Excel further submits that the Commission should reconsider implementation of the "deniable/non-deniable charge" rule, or stay the

<sup>1</sup> See *Truth-in-Billing and Billing Format*, First Report and Order and Further Notice of Proposed Rulemaking, FCC 99-72, released on May 11, 1999 ("Truth-in-Billing Order"), petition for review pending sub. nom. *Bell Atlantic-Delaware, Inc. et al. v. FCC*, Case No. 99-1844 (1<sup>st</sup> Cir., docketed on July 20, 1999). By Public Notice DA 99-1616, released on August 13, 1999, the Commission invited public comment on the following petitions: Ameritech, Petition for Stay, and Clarification or Reconsideration, filed on July 26, 1999 ("Ameritech Petition"); Cable Plus, L.P., and MultiTechnology Services, L.P. ("CablePlus"), Petition for Expedited, Temporary Waiver, filed on July 20, 1999; SBC Communications, Inc., Petition for Waiver or Stay, and Partial Clarification, filed on July 26, 1999 ("SBC Petition"); Sprint Corporation, Petition for Stay or Waiver and Partial Clarification, July 26, 1999 ("Sprint Petition"); United States Telephone Association, Petition for an Expedited Waiver or Stay ("USTA Petition"); and U S West Communications, Inc., Petition for Relief from Two Truth-in-Billing Mandates Pending Conclusion of Reconsideration Process, filed on July 19, 1999 ("U S West Petition").

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effective date of the rule. Accordingly, Excel urges the Commission to grant the Petitions and take any other measures it deems appropriate in accordance with the principles discussed below.

## **I. INTRODUCTION**

Excel is the fourth largest interexchange carrier in the United States in terms of presubscribed lines, and is one of the fastest growing providers of telecommunications services in the nation. Excel serves residential and commercial long distance subscribers, as well as Internet, dial-around, paging and calling card users. In keeping with the spirit of “truth-in-billing”, Excel is committed to providing clear and informative bills to its customers and state-of-the-art customer service support. Excel also currently operates three toll-free call centers that are equipped with high-tech call management/database systems to provide customers with timely, responsive personal service.<sup>2</sup> Finally, in a joint initiative with its E-commerce affiliate, up2technologies, inc., Excel also has recently introduced over 7,000 individual on-line Webstores which will provide Excel customers with instantaneous access to service information and the ability to send questions via e-mail regarding their accounts on-line.

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<sup>2</sup> These call centers are available to customers 24-hours-a-day and 7-days-a-week. Call center personnel receive initial training and on-going education to keep them current on relevant news and information which helps them utilize the technology provided.

## II. THE NEW SERVICE PROVIDER NOTIFICATION SHOULD BE LIMITED TO NEW PRESUBSCRIBED CARRIERS.

Section 64.2001(a)(2) of the Commission's Rules requires that telephone bills include a notification to customers of the identity of any "new service provider" and defines a "new" carrier as "any provider that did not bill for services on the previous billing statement." Excel strongly supports Sprint's position that compliance with this rule is infeasible to the extent that current billing systems cannot identify *all* new presubscribed and other carriers on a monthly billing cycle.<sup>3</sup> Excel further submits that identifying new non-presubscribed carriers will only make bills more confusing and complex. Accordingly, Excel urges the Commission to stay the new service provider rule and clarify that it requires that only *presubscribed* interexchange or local exchange carriers ("PCs") who did not bill for services on the previous billing statement need be identified as "new" on the customer's current bill.<sup>4</sup>

As evidenced in the Petitions, current billing systems do not have the capability to provide the billing functions to comply with Section 64.2001(a)(2), and substantial modifications would be required to implement such functionalities.<sup>5</sup> Implementation of

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<sup>3</sup> See Sprint Petition at 12-13.

<sup>4</sup> Limiting the new service provider rule to identification of new *presubscribed* carriers on customer bills would be consistent with the statutory basis for the rule as set forth in Section 258 of the Telecommunications Act of 1996 of deterring slamming, *i.e.* the unauthorized switching of a customer's presubscribed carrier.

<sup>5</sup> See Ameritech Petition at 2-3; USTA Petition at 3-4 ("exchange carrier billing entities have no system to do such a comparison" to achieve highlight of new service providers, as defined by the FCC, on monthly bills); U S West Petition at 6 (no ability to do "stare and compare" billing).

this rule would require a billing system capable of identifying and disclosing *all* presubscribed and non-presubscribed service providers who did not bill on a previous billing statement. To conclusively determine whether a carrier charge, such as a dial-around carrier charge, has not appeared on a previous billing statement and thus should be listed as “new,” the system would need to functionality – which currently does not exist – to search backward through several billing periods and make a comparison with the charges on the forthcoming billing statement.

As currently written, the new service provider rule also is overly broad. As Sprint notes, the new service provider rule will require identification not only of new presubscribed carriers, but also a potential host of non-presubscribed service providers, such as dial-around carriers, operator service providers (“OSP”), directory assistance (“DA”) providers, and pay-per-call providers.<sup>6</sup> Under the Commission’s pending proposal to adopt a wireless “calling party pays” (“CPP”) service option,<sup>7</sup> a bill sent to a customer placing a call to a wireless CPP phone or pager also would have to identify the wireless carrier as a “new” service provider, even though the caller is not presubscribed to the terminating wireless carrier’s service. Furthermore, as Sprint observes, listing as “new” any dial-around, OSP, DA, pay-per-call, or wireless CPP carrier charge simply because it was not billed in the previous month will increase billing complexity and customer confusion.<sup>8</sup>

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<sup>6</sup> See Sprint Petition at 12-13.

<sup>7</sup> See *Calling Party Pays Service Offering in the Commercial Mobile Radio Services*, WT Docket No. 97-207, FCC 99-137, Declaratory Ruling and NPRM (released on July 7, 1999)

<sup>8</sup> See Sprint Petition at 13.

Even if there were a legitimate basis for requiring notification of all “new” presubscribed and non-presubscribed service providers, current billing systems cannot identify such a wide class of new service providers, or do so within a monthly billing cycle. USTA and US West indicate that ILEC billing systems do not have the capability to identify all the potential “new” service providers on a monthly billing cycle. Excel’s billing system also is not capable of identifying “new” service providers on a monthly basis.

Furthermore, even if the rule is limited to notification of new presubscribed carriers, carriers other than executing carriers may not have the capability to identify a new presubscribed carrier and a stay will be required to permit billing systems to be developed to identify new presubscribed carriers on bills. For instance, an ILEC typically executes a PC change and will have the data in its billing system to identify when the “new” PC has submitted its charge and therefore should be listed as “new” on the customer bill. However, a resale-based competitive local exchange carrier (“CLEC”) providing its own billing may not necessarily have a way of identifying when the PC change has been executed by the ILEC, and that the “new” PC should be listed as “new” on the customer bill.

Finally, given that monthly billing is the industry standard, where charges that may be assessed by a “new” service provider under the Commission’s current rule are *not* billed on a monthly basis, implementation of the rule will become even more complicated and confusing.<sup>9</sup> Thus, a stay also is necessary to allow development of a billing system

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<sup>9</sup> For instance, in the *Low-Volume, Long-Distance Users NOI*, it has been proposed that IXCs bill for minimum usage charges for such low-volume users on a bi-

that can adequately track and identify “new” service provider charges that are not billed on a monthly basis.

### **III. A STAY OF THE TRUTH-IN-BILLING RULES AT LEAST UNTIL APRIL 1, 2000, IS IN THE PUBLIC INTEREST**

Currently, the Commission’s Order requires that carriers comply with the truth-in-billing rules as of the scheduled effective date of September 6, 1999.<sup>10</sup> Excel believes that the elements required for grant of a stay of this deadline are present here. As demonstrated in the Petitions, billing systems and support functions will require significant modifications at substantial direct cost to billing carriers, as well as indirect cost to carriers purchasing third-party billing services, to prepare for compliance with the new rules.<sup>11</sup>

Given the lack of clarity in the truth-in-billing rules, carriers may also be forced to use resources inefficiently or wastefully and incur substantial costs (both in terms of man-hours and financially) in attempting to conform to the rules, absent a stay. Further,

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monthly or quarterly, rather than monthly, basis. *See Low-Volume Long Distance Users*, Notice of Inquiry, FCC 99-168, at note 24 (released July 8, 1999). To comply with the new service provider rule, systems would have to be able to compare a minimum usage charges billed on a bi-monthly basis with other charges billed on a monthly basis.

<sup>10</sup> See Public Notice, DA 99-1423 *Enforcement Division of the Common Carrier Bureau Announces Delayed Effective Date of the Truth-in-Billing Rules*, released on July 20, 1999 (announcing that effective date of rules will occur no earlier than September 6, 1999, but that carriers will still be required to comply immediately upon the effective date).

<sup>11</sup> See Ameritech Petition at 5-6; Sprint Petition at 8-12; SBC Petition; USTA Petition at 5-8; U S West Petition at 19-24.

carriers also will be faced with the prospect of enforcement actions for non-compliance with unclear or unimplementable rules.<sup>12</sup>

Importantly, adhering to the Commission's unrealistic September 6 deadline will needlessly divert carriers' vital programming resources devoted to preparing for the conversion to the Year 2000 ("Y2K"). As reflected in the Petitions, the Commission's current deadline fails to take into account the potential negative impact on Y2K readiness.<sup>13</sup> Under the current deadline, carriers will be required to prepare systems for potential Y2K problems at the same time as they are making the substantial modifications to current billing systems to conform to the new truth-in-billing rules.

Excel respectfully submits that Y2K preparations should take precedence over compliance with the Commission's unrealistic truth-in-billing deadline, especially given the fact that the current rules do not provide clear guidance on what compliance will be required. Furthermore, a stay would be consistent with the purpose of the Y2K Act recently signed into law by President Clinton of "establish[ing] uniform legal standards to give [businesses] . . . reasonable incentives to solve year 2000 computer date-change problems before they develop."<sup>14</sup> Accordingly, Excel respectfully urges the Commission

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<sup>12</sup> See Sprint Petition at 10.

<sup>13</sup> See Ameritech Petition at 4; Sprint Petition at 8-9; SBC Petition at 8-9; U S West Petition at 3.

<sup>14</sup> See "The Year 2000 Readiness and Responsibility Act," (the "Y2K Act"), Pub. L. No. 106-37, 15 U.S.C. §§ 6601-6617, at Section 2(a)(8) and 2(b); *see also* Statement by the President, released on July 20, 1999.

to stay the truth-in-billing rules at least until April 1, 2000, and pending clarification or reconsideration of the rules as discussed herein.

**IV. COMPLIANCE WITH THE DENIABLE/NON-DENIABLE CHARGE RULE SHOULD BE STAYED TO PERMIT DEVELOPMENT OF APPROPRIATE BILLING SYSTEMS.**

Section 64.2001(c) of the Rules requires that for bills that contain both local and other charges, a “carrier” must explain which charges are “deniable” (*i.e.* subject to disconnection for non-payment) and which charges are non-deniable. As uniformly demonstrated in the Petitions, current billing systems do not have the capability to identify the numerous potential variations, as defined by state laws, on when a particular telecommunications service is deniable for non-payment, and any terms and conditions upon which a service becomes deniable.<sup>15</sup> Because a billing system does not currently exist that is able to capture all the potential existing and proposed state law variations in “deniable/non-deniable” billing disclosures that would be required by Section 64.2001(c) of a telecommunications carrier operating in multiple states, such carriers will be prevented from taking necessary collection actions on delinquent customer accounts and now face potentially massive uncollectibles and bad debt, if the September 6 compliance deadline is not stayed. Accordingly, the Commission should reconsider implementation of the deniable/non-deniable charge rule, or stay its effective date, to permit development of necessary billing systems.

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<sup>15</sup> See Sprint Petition at 13-15; U S West Petition at 9-11; USTA Petition at 10.



## V. CONCLUSION

For the foregoing reasons, Excel respectfully urges the Commission to grant a stay of the truth-in-billing rules until April 1, 2000, and pending reconsideration or clarification of the rules. Excel further supports Sprint's request that Section 64.2001(a)(2) of the Rules be clarified to provide that only new *presubscribed* carriers are required to be identified on a customer bill. Finally, the Commission should reconsider implementation of the deniable/non-deniable charge rule, or stay its effective date, as described above.

Respectfully submitted,

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Date: September 3, 1999

**CERTIFICATE OF SERVICE**

I, Melissa Smith, hereby certify that on this 3<sup>rd</sup> day of September, 1999 a copy of the **COMMENTS OF EXCEL TELECOMMUNICATIONS, INC.** was delivered by hand and first-class mail\* to the following:

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